

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 08-cr-12-bbc

STEVEN M. SKOIEN,

Defendant.

DEFENDANT'S MOTION TO DISMISS INDICTMENT

The Defendant, STEVEN M. SKOIEN, through counsel hereby moves this Court to enter an Order dismissing the Indictment in this matter on the ground that the statute under which he is charged – namely, 18 U.S.C. § 922(g)(9) – violates the Second Amendment to the United States Constitution. As grounds for this Motion, Skoien states as follows:

1. Skoien is charged in a one-count Indictment with possessing three firearms after having been convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9).

2. Skoien submits that this statute violates the Second Amendment's guaranty that "the right of the people to keep and bear arms shall not be infringed."

In making this argument, Skoien acknowledges that the current law of this Circuit

forecloses his argument. See *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710-12 (7th Cir. 1999); *United States v. Price*, 328 F.3d 958, 961 (7th Cir. 2003). The Circuit has recently recognized, however, that

[t]here are open questions, reflected in *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007), cert granted under the name *District of Columbia v. Heller*, ___ U.S. ___, 128 S. Ct. 645, 169 L.Ed.2d 417 (2007) (argued March 18, 2008), about the extent to which the Constitution's second amendment allows the national government to regulate firearms.

Ibrahim Ali v. Michael Mukasey, ___ F.3d ___, 2008 WL 901467 *2(7th Cir April 4, 2008). In light of the oral argument in *Heller*,¹ it appears likely that the previous understanding of the scope of the Second Amendment's protection will no longer stand.² For that reason, Skoien raises this issue here for the purpose of preserving it for further appellate review.

WHEREFORE, Skoien, by counsel, respectfully moves this Court to enter an Order dismissing the indictment against him in this matter.

¹ For the Court's convenience, the transcript of the oral argument in *Heller* is attached as Exhibit A to this Motion.

² The question presented in *Heller*, as framed by the Court, is: "Whether [certain provisions of the D.C. Code, which prohibit the possession of handguns] violate the second amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?"

Dated at Madison, Wisconsin April 14, 2008.

Respectfully submitted,

STEVEN M. SKOIEN, *Defendant*

/s/ Michael W. Lieberman

Michael W. Lieberman, Bar # 1059034

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served via the Court's CM/ECF system to Assistant United States Attorney Timothy M. O'Shea, this 14th day of April, 2008.

/s/ Michael W. Lieberman

Michael W. Lieberman